

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 13TH DECEMBER 2006 / 22ND AGRAHAYANA 1928

WP(C).No. 33197 of 2006(B)

PETITIONER:

IDEA MOBILE COMMUNICATIONS LIMITED,
MERCY ESTATE, 4TH FLOOR, RAVIPURAM,
M.G.ROAD, COCHIN-15, REPRESENTED BY ITS
AUTHORIZED PERSON SHRI. C.A.RAMACHANDRAN,
SENIOR MANAGER (LEGAL).

BY ADV. SRI.DEEPU THANKAN

RESPONDENTS:

1. THE INTELLIGENCE OFFICER,
OFFICE OF THE INTELLIGENCE OFFICER,
MATTANCHERRY SQUAD NO.I, AT MINI CIVIL STATION,
ALWAYE.
2. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE III, KVAT, COMMERCIAL TAXES OFFICE,
THEVARA, ERNAKULAM.
3. THE INSPECTING ASSISTANT COMMISSIONER
(INTELLIGENCE), COMMERCIAL TAX OFFICE,
KOCHI.

BY GOVT.PLEADER SRI JULIAN XAVIER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 13/12/2006, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

P.R.RAMAN, J.

W.P. (C) .NO.33197 OF 2006

Dated this the 13th day of December, 2006

JUDGMENT

By Ext.P6 the goods belonging to the petitioner is detained and he was asked to furnish security for an amount of Rs.3,61,130/- being double the amount of tax on the goods. These goods were coming from outside the State after repairs. The contention of the petitioner is really true. The goods were detained on the following reasons:

"1. In the delivery Challan it is noted that goods are transported for replacement. In the bottom of delivery Challan it is certified that this is for sale. If it is for replacement the details of goods received for replacement is not allowable in the delivery Challan.

2. The statutory documents in VAT D3, the TIN number is not mentioned but in delivery Challan VAT CST numbers is written manually which is

W.P.(C).NO.33197/2006

subsequently added by some one else.

3. The item of commodity is not furnished in the delivery Challan & statutory form as prescribed under KVAT Act, 2003.

4. Hence the bona fide of the transport and genuineness of the documents and attempted tax evasion suspected."

2. I have perused Ext.P7 which clearly shows the nature of the transaction. It is clearly stated that not for sale/no commercial value. As against the nature of transaction a star mark is shown, which is explained at the bottom, which has no relevance in the factual situation. There is nothing to indicate in the delivery Challan that it is intended for sale. Further after Sl.No.7 the other items have been shown "as per annexure enclosed", which shows 12 items. It is true that Tin number is not shown in the delivery Challan. But according to the petitioner, it is a mistake committed by the office. Anyway, these are all

W.P.(C).NO.33197/2006

matters which ultimately has to be considered and decided by the authorities concerned. Prima facie, these contentions are to be looked into. It appears that these contentions as raised by the petitioner have force. Petitioner is a registered dealer. According to him, the goods are intended for capital consumption and not for sale. He is regularly paying huge amount of tax. In the factual situation, he submits that the suspicion entertained by the officer concerned is due to the mistake of fact and asking to furnish huge amount of security is not justified. Subsequently, pursuant to Ext.P6 the petitioner was also served with Ext.P9, as he did not approach for releasing the goods by furnishing security. Ext.P9 is a notice for sale of the goods. Aggrieved by the same, the petitioner has approached this Court.

3. In the factual situation, taking note

W.P.(C).NO.33197/2006

of the fact that the petitioner is a registered dealer and considering the contention raised by him and the connected document produced along with the writ petition, the petitioner has a prima facie case for consideration by the authorities concerned. Balance of convenience is in his favour.

4. In the circumstances, there will be a direction that the goods shall be released to the petitioner on condition that he shall furnish bank guarantee for 50% of the amount demanded in Ext.P6 subject to further enquiry as contemplated under law.

Writ Petition is disposed of with the above direction.

P . R . RAMAN ,
JUDGE .

kcv.